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9 Attorneys for Plaintiff  
10 Federal Trade Commission

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

14  
15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 SWISH MARKETING, INC., a corporation,

19 MARK BENNING, individually and as an  
officer of SWISH MARKETING, INC.,

20 MATTHEW PATTERSON, individually and  
21 as an officer of SWISH MARKETING, INC.,  
22 and

23 JASON STROBER, individually and as an  
officer of SWISH MARKETING, INC.,

24 Defendants.  
25

Case No. C09-03814 -RS

**STIPULATION AND  
[PROPOSED] ORDER TO  
CONTINUE CASE  
MANAGEMENT CONFERENCE**

26 Pursuant to Local Rule 6-2, the parties, by and through their respective attorneys, hereby  
27 stipulate to and respectfully request this Court continue the Case Management Conference  
28

**STIPULATION TO CONTINUE CASE MANAGEMENT CONFERENCE - C09 3814 RS**

1 scheduled for March 3, 20011, and corresponding Joint Case Management Statement, so that the  
2 FTC may finalize its consideration of proposed settlements with the remaining individual  
3 defendants.

4 1. On November 19, 2010, the parties participated in a settlement conference with  
5 Magistrate Judge Spero.

6 2. During that settlement conference and over the subsequent weeks, the parties made great  
7 progress towards resolving this matter as it relates to the remaining individual defendants, Mark  
8 Benning and Matthew Patterson. As a result of those talks, defendants Benning and Patterson  
9 have signed stipulated final judgments that would resolve this case as to them. Those  
10 settlements have not been formally approved by the Commission. If approved, the parties  
11 anticipate that they will seek only limited additional fact discovery, if any.

12 3. At this time, the FTC and defendant Swish Marketing, Inc., do not expect to reach a  
13 settlement in this matter. The FTC plans to file a motion for summary judgment as to defendant  
14 Swish Marketing, Inc.

15 4. To allow the Commission an opportunity to review the proposed settlements, the parties  
16 filed a stipulation and proposed order continuing the pending discovery deadlines, which the  
17 Court entered on January 12, 2011 ("January Stipulation") (Dkt. #133).

18 5. The Commission is now finalizing its review of the proposed settlements.

19 6. In the Case Management Scheduling Order (Dkt. #103) entered on July 12, 2010, the  
20 Court scheduled a Case Management Conference on March 3, 2011, and ordered the parties to  
21 file a Joint Case Management Statement one week prior. The parties inadvertently failed to  
22 seek a continuance of these dates in the January Stipulation.

23 7. Consistent with the discovery schedule set forth in the January Stipulation, in which the  
24 date to complete expert discovery is July 19, 2011, the parties respectfully request that the Court  
25 continue the Case Management Conference until July 21, 2011. The parties further request that  
26 the date by which to file a Joint Case Management Statement be continued to July 14, 2011, one  
27 week prior.

1 IT IS SO STIPULATED.

2 Respectfully submitted,

3 DATED: March 1, 2011

/s/ Lisa D. Rosenthal  
LISA D. ROSENTHAL  
KERRY O'BRIEN  
EVAN ROSE  
ERIC D. EDMONDSON

6 Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

8 (The filer attests that concurrence in the filing of this document has been obtained from  
9 each of the other signatories.)

11 DATED: March 1, 2011

/s/ Brian Grossman  
BRIAN GROSSMAN  
TESSER & RUTTENBERG

13 Attorneys for Defendants  
SWISH MARKETING, INC.,  
14 MATTHEW PATTERSON, and  
15 JASON STROBER


16 DATED: March 1, 2011

/s/ Jay Fowler  
DANIEL J. BERGESON  
JAY FOWLER  
ELIZABETH D. LEAR  
BERGESON, LLP

19 Attorneys for Defendant  
20 MARK BENNING

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

25 DATED: 3/1/11

24   
26 RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

28 **STIPULATION TO CONTINUE CASE MANAGEMENT CONFERENCE - C09 3814 RS**